

THE BRADLEY PRODUCING CORPORATION

IBLA 74-123

Decided March 20, 1974

Appeal from decision of the Wyoming State Office, Bureau of Land Management, rejecting simultaneously filed oil and gas lease offer W 40971.

Affirmed.

Oil and Gas Leases: Applications: Generally

An oil and gas lease offer filed in the name of a corporation is properly rejected where it is not accompanied by a statement as to corporate qualifications, or a reference by serial number to a record in which such statement previously had been filed.

APPEARANCES: Michael Cook, of The Bradley Producing Corporation, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

The Bradley Producing Corporation has appealed from a decision of the Wyoming State Office, Bureau of Land Management, dated October 5, 1973, rejecting its oil and gas lease offer W 40971 for Parcel 258. The offer was filed on June 22, 1973, in a simultaneous drawing procedure, pursuant to 43 CFR Subpart 3112. The offer, filed on a drawing entry card, was rejected because it was not accompanied by a statement of corporate qualifications, and did not make reference to a serial number of a record in which such a statement had previously been filed, as required by 43 CFR 3102.4-1.

In its appeal, appellant urges that the lease be issued because:

We believe a copy of the attached statement was enclosed in the envelope submitted with offer to lease Parcel #258

thereby fulfilling the requirements of the offer to lease. (Emphasis added.)

The attachment referred to is a copy of a letter to appellant, dated February 3, 1972, from the Montana State Office, Bureau of Land Management, accepting the corporate qualifications of The Bradley Producing Corporation to hold Federal oil and gas leases, and stating that whenever it was necessary to furnish evidence of qualifications in future transactions reference might be made to file number Montana 065500. The instant filing did not refer to that serial number, as required by regulation 43 CFR 3102.4-1.

In transmitting the appeal and case file to this Board, the Wyoming State Director commented:

A third search was made for the appellant's attachment after the appeal was filed. We are unable to locate the copy of this document that he claims was submitted with the offer to lease, and have no evidence that it was submitted with the offer.

The appeal is based upon appellant's belief. No proof as to proper filing having been submitted, it must be reluctantly concluded that appellant failed to comply with regulation 43 CFR 3102.4-1 in failing to refer to file serial number Montana 065500 with the entry card. However, the requirement of the regulation is mandatory, and the Department has consistently held that an offer which does not meet the mandatory requirement of the regulation must be rejected. Texas American Corporation, 14 IBLA 217 (1974); American Mineral Petroleum Corporation, 10 IBLA 185 (1973); Apollo Drilling & Exploration, Inc., 10 IBLA 81 (1973); Pan Ocean Oil Corporation, 2 IBLA 156 (1974).

Although appellant submitted its corporate qualification statement with its appeal, the subsequent filing cannot cure the defect in appellant's offer which was filed pursuant to the simultaneous filing procedures. Texas American Corporation, *supra*; Read & Stevens, Inc., 9 IBLA 67 (1973).

Accordingly, we find that the Wyoming State Office properly rejected appellant's offer.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

I concur:

Martin Ritvo
Administrative Judge

ADMINISTRATIVE JUDGE GOSS CONCURRING:

I agree with the majority opinion, but wish to add that the defect here is more than a technical defect and is a matter of some substance. Under 43 CFR 3102.4, when an offeror refers to material on file, in effect he thereby incorporates such material into his offer and represents that, together with any amendments, such data is current. Without the required reference, there is no assurance that at the time of offer the corporation fulfilled the requirements of Subpart 3102 as to the qualifications of lessees.

Joseph W. Goss
Administrative Judge

